IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Review Application No. 93 of 2003
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1. Subramani
2. Pattu .. Applicants

Versus

1. S.J. Devadas (died)
2. Elizabeth (died)

3. Sabina
4. Anthony
5. Anthoniammal
7. Arokiamary
7. Inbanathan
8. Charles
9. Johnson
10. Carlina Mary .. Respondents

Review application filed under Section Order 47 Rule 1 of CPC to review the Judgment and Decree dated 17.09.2002 made in S.A. No. 288 of 1991 on the file of this Court.

For Applicants : Mr. D. Rajendran

For Respondents : Mr. Vanchinathan for RR5 to 10

ORDER

The review petitioners are the respondents in S.A. No. 288 of 1991. The respondents 1 and 2 herein have filed O.S. No. 219 of 1986 on the file of District Munsif Court, Arakkonam for declaration of title to the 'B' Schedule Property and consequently for delivery of possession or in the alternative, a declaration of their prescriptive right of way and free passage for the drainage water and for mandatory injunction directing the defendants therein to remove the obstructions from the B Schedule Described Property. The said suit was decreed on 28.07.1989 and the appeal preferred by the review petitioners was allowed on 18.12.1989, hence, the respondents 1 and 2 herein have filed the above said second appeal, which was allowed by A.Ramamurthi, J by Judgment dated 17.09.2002 confirming the decree and judgment of the trial court.

2. This review petition was filed on 31.10.2002, which was returned for certain compliance and the

same was re-presented on 21.08.2003 and the review petition was numbered on 21.08.2003. In the meantime, A. Ramamurthi, J retired and therefore the review application was ordered to be posted before this Court on 10.09.2003. On 21.11.2003, it was reported that both the respondents herein died and later CMP No. 1442 of 2004 was filed on 23.01.2004 to bring the legal heirs i.e., respondents 3 and 4 on record, which was allowed on 08.09.2005. On 06.04.2004, CMP No. 6384 of 2004 was filed to implead the respondents 5 to 10 herein in the review application, which was also allowed on 08.09.2005. Several adjournments were granted on the request of both sides for reporting settlement, at last, it was reported today that settlement is not possible and the review application was taken up for hearing today i.e., 14.09.2006 and this Court considered the argument of counsel for both sides.

3. It is canvassed in the review application that the second appeal was allowed by the learned single Judge without considering the facts and circumstances involved therein. The learned single Judge ought to have dismissed the second appeal on the ground of inconsistent plea taken by the respondents namely one for declaration of title and another one for prescriptive right of way and free passage for the drainage water, besides, the learned single Judge failed to take note of the two reports filed by the advocate commissioner and prayed for allowing the review application.

4. The learned counsel appearing for the respondents 5 to 10 submitted that under Order 47 Rule 1 CPC, review is not at all maintainable in law and the petitioners herein under the pretext of review application seeks this Court to re-write second judgment and prayed for dismissal of the review application.

5. Review must be confined to error apparent on the face of the records. Error must be such as would be apparent on mere look of the record without requiring any long drawn process of reasoning. Re-appraisal of entire evidence on record would amount to exercise of appellate jurisdiction which is not permissible as held by the Honourable Supreme Court in the decision reported in (Meera Bhanja vs. Nirmala Kumari Choudhury) (1995) 1 Supreme Court Cases 170 wherein it was observed thus:-

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior to issue such a writ."

6. Similarly, the Honourable Supreme Court in the decision reported in (Devaraju Pillai v. Sellayya Pillai) AIR 1987 Supreme Court 1160 held thus;-
"on an application being filed for review of the judgment of the learned single Judge, another learned single Judge of the High Court the Judge who heard the Second Appeal not being available virtually sitting in Judgment over the decision of the learned single Judge who decided the Second Appeal construed the document differently and held that it was a will and not a deed of settlement. This the learned single Judge was not entitled to do. If the party is aggrieved by the Judgment of the single judge sitting in second appeal, the appropriate remedy for the party is to file an appeal against that Judgment. A remedy by way of an application for review is entirely misconceived and if a single judge entertains the application for review than he totally exceeds his jurisdiction in allowing the review, merely because he takes a different view on construction of the document."

7. In this context, it is relevant to look into the decision reported in (Jayaraman and another vs. The Union of India and another) AIR 2003 Madras 29 wherein a division Bench of this Court held in Para-17 thus:-

"17. In this review application,the grounds urged by the learned counsel for the review applicants would disclose that an answer to the review sought for in this review application has to be detected by the process of reasoning and, therefore, it cannot be an error apparent on the face of the record. It is an appeal in the disguise and, therefore, such an appeal under the guise of a review application, to re-hear and correct the judgment already delivered by the Division Bench of the High Court, cannot be entertained...."

8. In this case, the learned single Judge allowed the second appeal is not available, who, on appreciation of oral and documentary evidence took the view that the respondents 1 and 2 herein are entitled to the remedy sought for. The grounds urged by the review petitioners disclose that an answer to the review sought for has to be detected by the process of reasoning, which cannot be an error apparent on the face of the records, which is nothing but an appeal in disguise, therefore, the review application seeking to re-hear and correct the judgment already delivered by the learned single Judge cannot be permitted.

9. In the result, the review application is dismissed. No costs.

rsh

[vsant 8100]